IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9228 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADNASING @ HARJITSING CHARANSING SIKLIGAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the detention order dated 9.8.2002, by

which he is detained as a "Dangerous Person" under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, he is served with the grounds of detention, in which there is a reference about three criminal cases, which are lodged against the petitioner under Sections 395, 379, 457, 380 and 511 of the Indian Penal Code. The activities of the petitioner are highlighted in the detention order. It is alleged that the petitioner has committed robbery and theft of various articles, including even theft of a motor car. In the detention order, there is a reference about statements of two witnesses.

The Detaining Authority, after having been satisfied about the activities of the petitioner, has detained the petitioner under PASA. The said order is impugned in this petition by the petitioner.

On behalf of the petitioner, it is argued that statements of the witnesses were recorded on 3rd August, 2002 and 7th August, 2002. The said statements were verified on the very next day, i.e. on 8th August, 2002, and the detention order is passed immediately on the very next day, i.e. on 9.8.2002. It is submitted that in view of the voluminous evidence, it is not possible to believe that the detaining authority must have gone through the entire record within a short time of a day.

Mr.Pancholi, learned AGP, on the other hand, has submitted that the proposal was received by the detaining authority on 7th August, 2002 and the statements of witnesses were verified on 8th August, 2002 and, thereafter, after considering the material on record, passed the order of detention on the very next day, i.e. on 9.8.2002. However, it is required to be noted that the bunch of papers runs into about 275 pages and it is, therefore, not possible to believe that the detaining authority was able to apply his mind to the facts and circumstances of the case, as the detaining authority passed the order of detention immediately on the next day, i.e. on 9th August, 2002. Learned Advocate for the petitioner has placed reliance on the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696. This Court has observed as under in paragraph 9 :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before

> the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

Considering the aforesaid aspect of the matter and considering the fact that there is a voluminous evidence on record, by which it is not possible to believe that within a day, the Authority must have been able to apply his mind in passing the order, and considering the aforesaid judgment of this Court, the order of detention is required to be set aside.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

13th March, 2003 (P.B. Majmudar, J.)

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(apj)